

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

-----  
**DOUGLAS EL,**  
**Individually and on behalf of**  
**all others similarly situated,**  
**Plaintiff,**

**v.**

**SOUTHEASTERN PENNSYLVANIA**  
**TRANSPORTATION AUTHORITY,**  
**Defendant.**  
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**CIVIL ACTION  
NO. 02-CV-3591**

**ORDER**

THIS MATTER having come before the Court on Plaintiff's Emergency Motion for  
Discovery Sanctions Regarding the Deposition of Douglas Carpenter,

IT IS, on this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

ORDERED THAT Plaintiff's Motion is GRANTED, and that:

1. SEPTA is held in contempt of Court for failing to produce Douglas Carpenter for deposition on a date it selected;
2. Mr. Carpenter's Affidavit shall be stricken from the record in this case, and Mr. Carpenter shall be barred from testifying at trial;
3. SEPTA shall produce Mr. Carpenter for deposition on a date selected by Plaintiff's counsel within ten days of the entry of this order;
4. The due date for Plaintiff's Summary Judgement Opposition shall be extended to March 23, 2005; and
5. SEPTA shall compensate Plaintiff for the fees, costs and expenses associated with scheduling the Carpenter deposition and creating a record of the witness' failure to attend.

\_\_\_\_\_  
THE HONORABLE J. CURTIS JOYNER  
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**DOUGLAS EL,**  
**Individually and on behalf of**  
**all others similarly situated,**  
**Plaintiff,**

**v.**

**SOUTHEASTERN PENNSYLVANIA**  
**TRANSPORTATION AUTHORITY,**  
**Defendant.**  
-----

**CIVIL ACTION**  
**NO. 02-CV-3591**

**Validation of Signature**  
**Code: DJC4376**

**PLAINTIFF'S EMERGENCY MOTION FOR DISCOVERY SANCTIONS**  
**REGARDING THE DEPOSITION OF DOUGLAS CARPENTER**

For the reasons set forth in the attached Memorandum, Plaintiff respectfully moves this Court to: (1) grant this Motion; (2) find SEPTA in contempt of Court for failing to produce Douglas Carpenter for deposition on a date selected by SEPTA; (3) strike Mr. Carpenter's Affidavit from the record in this case and bar Mr. Carpenter from testifying at trial; (4) order SEPTA to produce Mr. Carpenter for deposition on a date selected by Plaintiff's counsel within ten days of this order; (5) extend the due date for Plaintiff's Summary Judgement Opposition to March 21, 2005; and (6) order SEPTA to compensate Plaintiff for the fees, costs and expenses associated with scheduling Mr. Carpenter's deposition and creating a record of his failure to attend.

Respectfully submitted,



Dated: February 10, 2005

\_\_\_\_\_  
Eugene A. Spector  
David J. Cohen  
Rachel Kopp  
SPECTOR, ROSEMAN & KODROFF, P.C.  
1818 Market Street, Suite 2500  
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Attorneys for Plaintiff and the Class

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>DOUGLAS EL,</b>	:	
<b>Individually and on behalf of</b>	:	
<b>all others similarly situated,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	<b>NO. 02-CV-3591</b>
<b>v.</b>	:	
	:	<b>Validation of Signature</b>
<b>SOUTHEASTERN PENNSYLVANIA</b>	:	<b>Code: DJC4376</b>
<b>TRANSPORTATION AUTHORITY,</b>	:	
<b>Defendant.</b>	:	
-----		

**BRIEF IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION  
FOR DISCOVERY SANCTIONS REGARDING  
THE DEPOSITION OF DOUGLAS CARPENTER**

Eugene A. Spector  
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(215) 750-3134

Attorneys for Plaintiff and the Class

Dated: February 10, 2005

**I. BACKGROUND INFORMATION**

**A. Summary Of Plaintiff's Allegations**

On November 13, 2002, Plaintiff filed a four-count Amended Complaint against SEPTA. Plaintiff's claims are based on an allegedly illegal employment policy SEPTA imposed on its paratransit providers that required them to reject all job applicants with a past criminal conviction and terminate all employees with a past criminal conviction without conducting any inquiry into when their conviction occurred, the circumstances surrounding their conviction, or whether their conviction had any relationship to their job responsibilities.

**B. Procedural Posture Of The Litigation**

On October 8, 2004, SEPTA filed an Amended Motion for Summary Judgment. As a result of Stipulations entered into by the parties and approved by this Court, Plaintiff's Response to this Motion is presently due on March 11, 2005.

**C. Relevant Facts**

On November 9, 2004, this Court granted Plaintiff's Revised Emergency Motion for Discovery Sanctions. As a result, the Court authorized Plaintiff to serve document requests on SEPTA concerning the Affidavit of Douglas Carpenter that had been offered in support of SEPTA's Summary Judgement motion and ordered SEPTA to produce Mr. Carpenter for deposition.<sup>1</sup>

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<sup>1</sup> Plaintiff's Revised Emergency Motion for Discovery Sanctions involved a request for discovery from three different SEPTA witnesses and raised several issues unrelated to the present inquiry. For purposes of the instant Motion, Plaintiff's discussion will be limited to facts and issues relating only to Mr. Carpenter.

On November 10, 2004, Plaintiff served document requests concerning Mr. Carpenter's Affidavit on SEPTA.

On November 23, 2004, pending receipt of SEPTA's document production, Plaintiff noticed Mr. Carpenter's deposition to take place on December 1, 2004. When SEPTA had not answered Plaintiff's document requests by November 30, 2004, this deposition was cancelled.

On December 20, 2004, Plaintiff received SEPTA's response to the Carpenter document request, but did not receive any responsive documents from SEPTA. On December 23, 2004, when it had become clear that SEPTA did not intend to produce any documents responsive to the Carpenter document requests, Plaintiff filed an Emergency Motion to Compel Merits Discovery Relating to the Affidavit of Douglas Carpenter.

On January 7, 2005, this Court denied Plaintiff's Emergency Motion to Compel and again ordered SEPTA to produce Mr. Carpenter for deposition. *See January 7, 2005 Letter* (Exhibit A).

On January 11, SEPTA agreed to produce Mr. Carpenter for deposition on January 20, 2005. *See January 11, 2005 Letter* (Exhibit B). Because of a scheduling conflict, Mr. Carpenter's deposition was postponed by agreement of the parties.

On January 21, 2005, SEPTA offered to present Mr. Carpenter for deposition on January 31, 2005. *See January 21, 2005 Letter* (Exhibit C). Plaintiff's counsel advised that they were not available on January 31<sup>st</sup> and, instead, asked SEPTA to provide Mr. Carpenter for deposition on any of seven potential dates in early February (February 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> and 14<sup>th</sup>). *See January 27, 2005 and January 28, 2005 Letters* (Exhibit D).

SEPTA first refused to produce Mr. Carpenter on any day other than January 31, 2005. *See January 28, 2005 Letter* (Exhibit E). But after receiving the seven dates proposed by Plaintiff's counsel for Mr. Carpenter's deposition, SEPTA's counsel advised that four of the proposed dates (February 2<sup>nd</sup>, 3<sup>rd</sup>, 9<sup>th</sup> and 14<sup>th</sup>) were acceptable "to take a deposition of Mr. Carpenter." *See January 28, 2005 Letter* (Exhibit F).

On January 31, 2005 – less than one business day after receiving this information from SEPTA's counsel – Plaintiff served SEPTA with a notice compelling Mr. Carpenter's appearance on February 9, 2005, one of the days identified by SEPTA's counsel as acceptable. *See January 31, 2005 Letter* (Exhibit G).

On February 4, 2005, SEPTA contacted Plaintiff to say that Mr. Carpenter's deposition could not proceed on February 9, 2005. *See February 4, 2005 Letter* (Exhibit H). Instead, SEPTA proposed that Mr. Carpenter's deposition take place on February 14, 2005, the same date that another SEPTA witness, Vincent Walsh, Esq., had been noticed to appear. *Id.*

Between February 4, 2005 and February 8, 2005, Plaintiff's counsel repeatedly explained to SEPTA, on the phone and in writing, that Plaintiff could not proceed with Mr. Carpenter's deposition on February 14<sup>th</sup> for several reasons, including: that Plaintiff's counsel expected Mr. Walsh's deposition to go well into the afternoon, leaving an insufficient time to depose Mr. Carpenter fully; and that Plaintiff had specifically noticed Mr. Carpenter's deposition for a date SEPTA had identified as available. *See February 8, 2005 Letters* (Exhibit I). Because Mr. Carpenter had been properly noticed, and in order to avoid any further delay in taking a deposition that had been ordered more than three months ago, Plaintiff insisted that Mr. Carpenter's proceed on February 9, 2005. *Id.*

On February 9, 2005, neither SEPTA's counsel nor Mr. Carpenter appeared for the deposition. Plaintiff was fully prepared to take the deposition, had readied his exhibits and retained a stenographer. Plaintiff's counsel waited more than thirty minutes for SEPTA to appear and then recorded a statement detailing Mr. Carpenter's failure to appear. *See February 9, 2005 Statement of Counsel* (Exhibit J).

**D. Plaintiff's Efforts To Resolve This Dispute**

In light of the repeated conferences and correspondence detailed above, and SEPTA's knowing and intentional failure to produce Mr. Carpenter for his deposition as noticed, Plaintiff believes that any further efforts to resolve this dispute would have been fruitless.

**II. ARGUMENT**

**A. This Court Has Authority To Impose the Requested Sanctions.**

The decision to impose sanctions for discovery violations under Rule 37(b)(2)(B) is "within the district court's broad discretion over discovery matters." Hussey v. Chase Manhattan Bank, 2005 WL 220845, \*1 (E.D. Pa. Jan 12, 2005); Ware Communications, Inc v. Rodale Press, Inc., 2002 WL 89604, \*2 (E.D. Pa. Jan. 23, 2002). See Clarke v. Whitney, 169 F.R.D. 623, 626 (E.D. Pa. 1996) (Joyner, J.) ("A court may impose sanctions pursuant to Fed.R.Civ.P. 37(b) upon a party for failure to comply with a discovery order").

Rule 37 proposes several sanctions to punish a party who fails to comply with a discovery order. These suggestions include holding the party in contempt of court and directing the party to pay reasonable expenses and attorney's fees. Fed. R. Civ. P. 37(b)(2)(D). See e.g. DiGregorio v. First Rediscount Corporation, 506 F.2d 781 (3d Cir. 1974) (directing party to pay expenses and attorney's fees for violating court order directing the party to file "complete and responsive



answers”).

**B. SEPTA's Conduct Is Deserving Of Sanctions**

Fed. R. Civ. P. 37(d) provides that, if a party fails to attend his own deposition after being served with proper notice, the court "may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule." *U.S. v. Gavett*, 2004 WL 1774579, \*2 (E.D. Pa. Aug. 9, 2004).<sup>2</sup>

Any number of courts in this District have awarded sanctions for a party's failure to appear for deposition. These sanctions range from entry of default judgement (in extreme cases) to extension of time to complete discovery and an award of fees and expenses. *See Clarke v. Whitney*, 975 F.Supp. 754, 755 (E.D. Pa. 1997) (default judgement granted as a result of failure to appear for deposition); *Stone v. Jefferson Hosp.*, 164 F.R.D. 37, 38 (E.D. Pa. 1995) (default judgement granted as a result of failure to appear for deposition); *Fraser v. Pennsylvania State System of Higher Educ.*, 1993 WL 456505, \*8 (E.D. Pa. Nov. 3, 1993) (granting additional time

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<sup>2</sup> Fed.R.Civ.P. 37(b)(2) permits the following sanctions where a party fails to appear for deposition:

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party....

for completion of discovery in light of party's failure to appear for deposition); *American Health Systems, Inc. v. Liberty Health System*, 1991 WL 4405, \*6 (E.D.Pa. Jan. 15, 1991) (granting request for fees and expenses in light of party's failure to appear for deposition); *Resolution Trust Corp. v. Fusselbaugh*, 1990 WL 124937, \*6 (E.D.Pa. Aug. 23, 1990) (failure to appear for deposition justifies imposition of sanctions in the amount of costs incurred by plaintiff in connection with the deposition)

SEPTA's failure to present its witnesses for deposition has also delayed the progress of his case and created a presumption of prejudice. *Huertas v. City of Philadelphia*, 2005 WL 226149, \*3 (E.D. Pa. Jan 26, 2005); *Pilot Air Freight Corp. v. Knight-Ridder, Inc.*, 1993 WL 418362, \*2 (E.D. Pa. Oct. 15, 1993 (failure to appear for deposition has caused prejudice by depriving party of information and forcing them to expend time on motions); *Hannah v. Philadelphia Coca-Cola Bottling Co.*, 1990 WL 33867, \*1 (E.D. Pa. Mar. 23, 1990) (failure to appear for deposition creates prejudices by hindering party's ability to prepare its case within the discovery period).

As set out above, the Court first ordered SEPTA to produce Mr. Carpenter for deposition on November 9, 2004 – more than three months ago. Plaintiff's counsel have diligently sought Mr. Carpenter's appearance, issued two deposition notices for dates accepted by SEPTA's counsel, and secured another verbal order to produce Mr. Carpenter from the Court on January 7, 2005. Despite the Court's orders and Plaintiff's efforts, SEPTA has failed to produce Mr. Carpenter for deposition and has prejudiced Plaintiff's ability to litigate his case. As a result, an award of sanctions is justified.

**C. SEPTA's Proposed Solution Would Only Prejudice Plaintiff Further**


The fact that SEPTA's counsel has provided another date for the deposition does not remedy this situation. The only date SEPTA has provided, despite repeated requests from Plaintiff's counsel, is February 14, 2005. As explained above, Plaintiff has already noticed another deposition for that day. The witness to be deposed on February 14<sup>th</sup> is an attorney for SEPTA who was instrumental in creating the policy on which Plaintiff's claims are based and who has offered an affidavit containing numerous statements about the propriety of SEPTA's conduct that are not supported by any documents produced in discovery. SEPTA's steadfast insistence that Mr. Carpenter's deposition go forward on a day already set aside for the deposition of a key witness is nothing more than a transparent attempt to prevent Plaintiff's counsel from taking full and complete depositions of both witnesses and, thus, prejudice Plaintiff's ability to litigate his claims. Of course, it is also possible that SEPTA's reluctance to produce Mr. Carpenter for deposition flows from concerns that his live testimony may not support the assertions made in his Affidavit or, when fully explored, may actually injure SEPTA's litigation position. In either event, in refusing to produce Mr. Carpenter for deposition, SEPTA has engaged in bad faith conduct that is deserving of sanctions.

**III. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully asks this Court to: (1) grant this Motion; (2) find SEPTA in contempt of Court for failing to produce Douglas Carpenter for deposition on a date selected by SEPTA; (3) strike Mr. Carpenter's Affidavit from the record in this case and bar Mr. Carpenter from testifying at trial; (4) order SEPTA to produce Mr. Carpenter for deposition on a date selected by Plaintiff's counsel within ten days of this order; (5) extend the

due date for Plaintiff's Summary Judgement Opposition to March 21, 2005; and (6) order SEPTA to compensate Plaintiff for the fees, costs and expenses associated with scheduling Mr. Carpenter's deposition and creating a record of his failure to attend.

Dated: February 10, 2005



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Eugene A. Spector  
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Rachel Kopp  
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Attorneys for Plaintiff and the Class

**CERTIFICATE OF SERVICE**

I, David J. Cohen, hereby certify that, on this 10<sup>th</sup> day of February, 2005, a true and correct copy of Plaintiff's Emergency Motion for Discovery Sanctions Regarding the Deposition of Douglas Carpenter was served upon the following counsel as provided below:

Robert J. Haurin, Esquire  
Saul H. Krenzel and Associates  
the Robinson Building Suite 800  
42 South 15th Street  
Philadelphia, PA 19102  
BY HAND DELIVERY

Wayne A. Ely, Esquire  
Timothy M. Kolman & Associates  
The Shoppes at Flowers Mill  
225 Flowers Mill Road  
Langhorne, PA 19047  
BY FAX TRANSMISSION

  
\_\_\_\_\_  
David J. Cohen  
SPECTOR, ROSEMAN & KODROFF, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 496-0300

Attorney for Plaintiff and the Class

# EXHIBIT A

LAW OFFICES

**SPECTOR, ROSEMAN & KODROFF**

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ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
ANDREW D. ABRAMOWITZ\*\*\*  
JOHN A. MACORETTA\*  
WILLIAM G. CALDES\*  
DAVID J. COHEN\*  
DAVID FELDERMAN\*  
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JAY S. COHEN  
OF COUNSEL

\* MEMBER OF PA & NJ BAR  
\*\* MEMBER OF PA & NY BAR  
\*\*\* MEMBER OF MD BAR  
\*\*\* MEMBER OF NY & NJ BAR  
\*\*\* MEMBER OF NJ & FL BAR

January 7, 2005

**Via Fax Transmission**

Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

**Re: El v. SEPTA, Affidavit Depositions.**

Dear Mr. Haurin:

In our conference this morning, Judge Joyner ruled that the depositions of Douglas Carpenter, Frank Brandis and Vincent Walsh have to be completed by January 31, 2005. I would like to work with you to determine these witnesses' availability so that we can complete their depositions by this deadline. Please provide me with 2-3 dates between January 14, 2005 and January 31, 2005 that each of your witnesses will be able to appear. I would appreciate having this information as soon as possible so that I can address any scheduling problems.

I also write to confirm that Judge Joyner has ordered that the due date of Plaintiff's Summary Judgement Opposition will be extended by the number of days beyond January 14, 2004 it takes to complete these depositions.

Very truly yours,



David J. Cohen

cc: Wayne Ely, Esquire (by fax)

# EXHIBIT B



**Saul H. Krenzel & Associates**

THE ROBINSON BUILDING  
42 S. 15TH STREET, SUITE 800  
PHILADELPHIA, PA 19102

TELEPHONE (215) 977-7230  
FACSIMILE (215) 977-7240

January 11, 2005

**VIA FACSIMILE**

David J. Cohen, Esquire  
Spector, Roseman & Kodruff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

**RE: El v. SEPTA**

Dear Mr. Cohen:

This will confirm that Mr. Carpenter is available for a deposition on January 20, 2005 and Mr. Walsh is available for a deposition on January 31, 2005. However, we are not available for a deposition on January 26, 2005. We are available for a deposition on January 27, 2005 for Mr. Brandis.

Sincerely,

  
ROBERT J. HAURIN

RJH/bl

cc: Wayne Ely, Esquire

# EXHIBIT C

**Saul H. Krenzel & Associates**

THE ROBINSON BUILDING  
42 S. 15TH STREET, SUITE 800  
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TELEPHONE (215) 977-7230  
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January 21, 2005

**VIA FACSIMILE**

David J. Cohen, Esquire  
Spector, Roseman & Kodruff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

**RE: El v. SEPTA**

Dear Mr. Cohen:

This will confirm that Mr. Brandis is available for a deposition on January 27, 2005 at 1:00 p.m. However, Mr. Carpenter is not available for a deposition on that date. Mr. Carpenter is available for a deposition on January 31, 2005 in the afternoon.

Sincerely,



ROBERT L. HAURIN

RJH/bl

cc: Wayne Ely, Esquire

# EXHIBIT D

LAW OFFICES  
**SPECTOR, ROSEMAN & KODROFF**

EUGENE A. SPECTOR  
ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
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JAY S. COHEN  
OF COUNSEL

\* MEMBER OF PA & NJ BAR  
\*\* MEMBER OF PA & NY BAR  
\*\*\* MEMBER OF MD BAR  
\*\*\* MEMBER OF NY & NJ BAR  
\*\*\* MEMBER OF NJ & FL BAR

January 27, 2005

**Via Fax Transmission**

Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

**Re: El v. SEPTA Deposition and Daubert scheduling issues.**

Dear Mr. Haurin:

As I explained to you on the phone this afternoon, Judge Joyner has granted my request and extended the time to complete the depositions of Douglas Carpenter and Vincent Walsh to February 14, 2005. Consistent with his previous ruling, the due date for Plaintiff's Summary Judgment Opposition will also be extended beyond February 25, 2005 by the number of days beyond January 31, 2005 it takes us to complete these depositions. I will continue to work with you to schedule the Carpenter deposition – hopefully for February 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup>. You will need to work with Wayne's office to schedule the Walsh deposition, probably during the week of February 7<sup>th</sup>.

Judge Joyner has also agreed to postpone the Daubert hearing previously set for February 2, 2005. His Clerk has asked me to work with you and try to determine a date on which all three of our experts (Fairley, Sobsey and Griffin) will be available for a hearing. I am then to contact his deputy, Angela, to request a new hearing date. The Judge did not give us a deadline, either for scheduling the hearing date or by which the hearing has to be completed. Since we will probably wind up selecting a date based on Mr. Sobsey's availability, please provide a few days on which he can arrange a trip to Philadelphia, and I will check those dates against Dr. Fairley's schedule. Please call me with any questions.

Very truly yours,



David J. Cohen

cc: Wayne Ely, Esquire (by fax)

LAW OFFICES  
**SPECTOR, ROSEMAN & KODROFF**

EUGENE A. SPECTOR  
ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
ANDREW D. ABRAMOWITZ\*\*\*  
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\*\*\* MEMBER OF MD BAR  
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\*\*\* MEMBER OF NJ & FL BAR

January 28, 2005

**Via Fax Transmission**

Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

**Re: El v. SEPTA Carpenter Deposition scheduling.**

Dear Mr. Haurin:

I just came out of a meeting and read the fax you sent at 1:15 p.m. today offering to produce Mr. Carpenter for a deposition at 1:00 p.m. on Monday. As I wrote to you yesterday, Judge Joyner has extended the time to complete Mr. Carpenter's deposition to February 14, 2005. Under these circumstances, I will not agree to take Mr. Carpenter's deposition on less than one business day's notice. I am confident that you and Mr. Carpenter will be able to appear on another day from the following list: February 3<sup>rd</sup> - 4<sup>th</sup>, February 8<sup>th</sup> - 9<sup>th</sup>, February 11<sup>th</sup> or February 14<sup>th</sup>. I do not believe this deposition will take more than three hours. As I have said, you can choose to begin at either 10:00 a.m. or 2:00 p.m. on any of these days, according to your client's preference. If you and your client are not available on any of these six days, please let me know and I will look into re-arranging my schedule to accommodate you.

Very truly yours,

  
David J. Cohen

# EXHIBIT E

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**Saul H. Krenzel & Associates**

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TELEPHONE (215) 977-7230  
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January 28, 2005

**VIA FACSIMILE**

David J. Cohen, Esquire  
Spector, Roseman & Kodruff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

**RE: Ely v. SEPTA**

Dear Mr. Cohen:

I have consulted with Douglas Carpenter about a deposition next week. We prefer that the deposition proceed on Monday, January 31, 2005 at 1:00 p.m. because of scheduling conflicts. Please confirm that the deposition will go forward on Monday.

Sincerely,



ROBERT J. HAURIN

RJH/bl

cc: Wayne Ely, Esquire



# EXHIBIT F

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## Saul H. Krenzel & Associates

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TELEPHONE (215) 977-7230  
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January 28, 2005

**VIA FACSIMILE**

David J. Cohen, Esquire  
Spector, Roseman & Kodruff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

**RE: El v. SEPTA**

Dear Mr. Cohen:

I understand from your last letter that you will not proceed with Mr. Carpenter's deposition on Monday. That is your prerogative. I am sure that even you can understand that SEPTA's employees have jobs to do and it is difficult to arrange their busy schedules to attend a deposition or court proceeding. You might also consider that I have other cases. I am not available for a deposition on any of the following days: February 1, 4, 7, 8 and 11. I also have a motion for summary judgment due in another case on February 11, 2005. That leaves exactly 2 days during your 2 week window to take a deposition of Mr. Carpenter and one of those days has to be devoted to Mr. Walsh's deposition.

Your professed loss of patience is of no consequence to me. I have tried to accommodate you and Wayne when there was a legitimate reason for postponing or continuing scheduled proceedings. In fact, I just agreed to a continuance of the Daubert hearing as an accommodation. I also agreed to several extensions of time for you to complete depositions, discovery and respond to our motion for summary judgment. I get no consideration from you and you continue to fail to keep your word. Your comment to me that I "do not have it in writing" speaks volumes about your character.

Sincerely,



ROBERT J. HAURIN

RJH/bl

# EXHIBIT G

LAW OFFICES  
**SPECTOR, ROSEMAN & KODROFF**

EUGENE A. SPECTOR  
ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
ANDREW D. ABRAMOWITZ\*\*\*  
JOHN A. MACORETTA\*  
WILLIAM G. CALDES\*  
DAVID J. COHEN\*  
DAVID FELDERMAN\*  
SIMON BAHNE PARIS\*\*\*  
JENNIFER L. ENCK  
RACHEL E. KOPP\*

A PROFESSIONAL CORPORATION  
1818 MARKET STREET, SUITE 2500  
PHILADELPHIA, PA 19103  
(215) 496-0300  
FAX (215) 496-6611  
E-MAIL: CLASSACTION@SRK-LAW.COM

JAY S. COHEN  
OF COUNSEL

\* MEMBER OF PA & NJ BAR  
\*\* MEMBER OF PA & NY BAR  
\*\*\* MEMBER OF MD BAR  
\*\* MEMBER OF NY & NJ BAR  
\*\*\* MEMBER OF NJ & FL BAR

January 31, 2005

**Via Fax Transmission and First Class Mail**

Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

Re: **El v. SEPTA Carpenter and Walsh Deposition Notices.**

Dear Mr. Haurin:

Enclosed please find notices for the depositions of Douglas Carpenter and Vincent Walsh. I have selected dates for these depositions on which you have said that both you and the witnesses are available. Judge Joyner has already ordered SEPTA to produce these witnesses for a deposition and, as I informed you late last week, has extended the deadline for completion of these depositions to February 14, 2005. If you do not produce these witnesses as noticed or receive a protective order from the Court, Plaintiff will file a motion for sanctions to address your conduct.

Very truly yours,

  
David J. Cohen

cc: Wayne Ely, Esquire (w/enclosures)

**SPECTOR ROSEMAN & KODROFF, P.C.**

**David J. Cohen**

**1818 Market Street, Suite 2500**

**Philadelphia, PA 19103**

**(215) 496-0300**

**Attorney for Plaintiff and the Class**

-----  
**DOUGLAS EL,**

**Individually and on behalf of**  
**all others similarly situated,**  
**Plaintiff,**

**v.**

**SOUTHEASTERN PENNSYLVANIA**  
**TRANSPORTATION AUTHORITY,**  
**Defendant.**  
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**UNITED STATES DISTRICT**  
**COURT FOR THE EASTERN**  
**DISTRICT OF PENNSYLVANIA**

**CIVIL ACTION**  
**NO. 02-CV-3591**

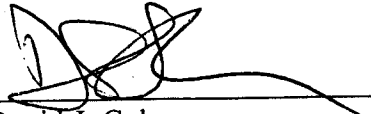
**NOTICE OF DEPOSITION**

To: Robert J. Haurin  
Saul H. Krenzel and Associates  
The Robinson Building, Suite 800  
42 S. 15<sup>th</sup> Street  
Philadelphia, Pa 19102

PLEASE TAKE NOTICE that, pursuant to the Pennsylvania Rules of Civil Procedure, Plaintiff, by his attorneys, will take the deposition of Mr. Douglas Carpenter before a person duly authorized to administer oaths at the offices of Spector Roseman & Kodroff, P.C., 1818 Market Street, Suite 2500, Philadelphia, Pennsylvania on February 9, 2005, commencing at 10:00 a.m. and continuing from day to day until completed.

You are invited to attend and participate to the extent permitted by law.

Dated: January 31, 2005

  
David J. Cohen

**SPECTOR ROSEMAN & KODROFF, P.C.**

**David J. Cohen**  
**1818 Market Street, Suite 2500**  
**Philadelphia, PA 19103**  
**(215) 496-0300**

**Attorney for Plaintiff and the Class**

-----  
**DOUGLAS EL,**  
**Individually and on behalf of**  
**all others similarly situated,**  
**Plaintiff,**  
**v.**

**SOUTHEASTERN PENNSYLVANIA**  
**TRANSPORTATION AUTHORITY,**  
**Defendant.**  
-----

**UNITED STATES DISTRICT**  
**COURT FOR THE EASTERN**  
**DISTRICT OF PENNSYLVANIA**

**CIVIL ACTION**  
**NO. 02-CV-3591**


**NOTICE OF DEPOSITION**

To: Robert J. Haurin  
Saul H. Krenzel and Associates  
The Robinson Building, Suite 800  
42 S. 15<sup>th</sup> Street  
Philadelphia, Pa 19102

PLEASE TAKE NOTICE that, pursuant to the Pennsylvania Rules of Civil Procedure, Plaintiff, by his attorneys, will take the deposition of Mr. Vincent J. Walsh, Jr. before a person duly authorized to administer oaths at the offices of Timothy Kolman & Associates, 225 North Flowers Mill Road, Langhorne, Pennsylvania on February 14, 2005, commencing at 10:00 a.m. and continuing from day to day until completed.

You are invited to attend and participate to the extent permitted by law.

Dated: January 31, 2005

  
\_\_\_\_\_  
David J. Cohen

# EXHIBIT H

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## Saul H. Krenzel & Associates

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THE ROBINSON BUILDING  
42 S. 15TH STREET, SUITE 800  
PHILADELPHIA, PA 19102

TELEPHONE (215) 977-7230  
FACSIMILE (215) 977-7240

February 4, 2005

**VIA FACSIMILE**

David J. Cohen, Esquire  
Spector, Roseman & Kodruff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

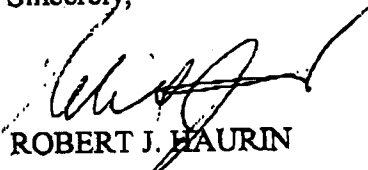
**RE: El v. SEPTA**

Dear Mr. Cohen:

Mr. Carpenter is not available for a deposition on February 9, 2005, and I do not have any other free days next week. However, he is available for a deposition on February 14, 2005 in the afternoon. Since you have already stated that you do not expect this deposition to go beyond three hours, I see no reason why the depositions of Walsh and Carpenter cannot be completed on the same day.

Please advise.

Sincerely,



ROBERT J. HAURIN

RJH/bl

cc: Wayne Ely, Esquire



# EXHIBIT I

LAW OFFICES  
**SPECTOR, ROSEMAN & KODROFF**

EUGENE A. SPECTOR  
ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
ANDREW D. ABRAWOWITZ\*\*\*  
JOHN A. MACORETTA\*  
WILLIAM G. CALDES\*  
DAVID J. COHEN\*  
DAVID FELDERMAN\*  
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1818 MARKET STREET, SUITE 2500  
PHILADELPHIA, PA 19103  
(215) 496-0300  
FAX (215) 496-6611  
E-MAIL: CLASSACTION@SRK-LAW.COM

JAY S. COHEN  
OF COUNSEL

\* MEMBER OF PA & NJ BAR  
\*\* MEMBER OF PA & NY BAR  
\*\*\* MEMBER OF MD BAR  
\*\* MEMBER OF NY & NJ BAR  
\*\*\* MEMBER OF NJ & FL BAR

February 8, 2005

**Via Fax Transmission**


Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

**Re: El v. SEPTA Douglas Carpenter Deposition.**

Dear Mr. Haurin:

I have received your response to my letter concerning the scheduling of Mr. Carpenter's deposition. I have repeatedly explained to you that I cannot depose Mr. Carpenter on February 14<sup>th</sup> because of the potential for conflict with the deposition of Vincent Walsh, another SEPTA witness scheduled to be deposed that same day. Because Mr. Walsh was instrumental in the creation of SEPTA's discriminatory employment policy, Mr. Ely and I both expect his deposition to go well into the afternoon. Since I have no way of knowing when Mr. Walsh's deposition will end, I cannot possibly agree to depose Mr. Carpenter that same day, and doing so could limit my ability to explore all avenues of questioning with him. It was you who selected February 9<sup>th</sup> as an open date for this deposition, not me. I am prepared for this deposition and, barring an agreement to the contrary, expect it to go ahead as noticed. If you do not see fit to appear, it will be left to Judge Joyner to decide who is in the right.

Very truly yours,



David J. Cohen

cc: Wayne Ely, Esquire

LAW OFFICES  
**SPECTOR, ROSEMAN & KODROFF**

EUGENE A. SPECTOR  
ROBERT M. ROSEMAN\*\*  
JEFFREY L. KODROFF  
JEFFREY J. CORRIGAN\*\*  
THEODORE M. LIEVERMAN\*  
ANDREW D. ABRAMOWITZ\*\*\*  
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JAY S. COHEN  
OF COUNSEL

\* MEMBER OF PA & NJ BAR  
\*\* MEMBER OF PA & NY BAR  
\*\*\* MEMBER OF MD BAR  
\*\* MEMBER OF NY & NJ BAR  
\*\*\* MEMBER OF NJ & FL BAR

February 8, 2005

**Via Fax Transmission**

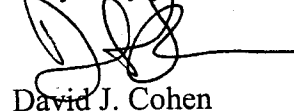
Robert J. Haurin, Esquire  
Saul H. Krenzel & Associates  
42 South 15<sup>th</sup> Street, Suite 800  
Philadelphia, PA 19102

**Re: El v. SEPTA Douglas Carpenter Deposition.**

Dear Mr. Haurin:

On January 28, 2005 (a Friday), I sent you six possible dates for Douglas Carpenter's deposition. That same day, you wrote to say you were not available on three of these dates, leaving February 3<sup>rd</sup>, February 9<sup>th</sup> and February 14<sup>th</sup> as potential dates for Mr. Carpenter's deposition. On January 31, 2005 (the following Monday), I noticed Mr. Carpenter's deposition for February 9, 2005. As you know, I have been trying to take Mr. Carpenter's deposition since November 9, 2004, when Judge Joyner authorized discovery on testimony and documents you introduced in support of SEPTA's revised summary judgement motion. I have spent a significant amount of time and effort scheduling and preparing for this deposition, and I expect it to go ahead as noticed. If it does not, I will file a motion for sanctions against SEPTA and seek an extension of the due date for Plaintiff's summary judgement opposition. Please call me with any questions.

Very truly yours,



David J. Cohen

cc: Wayne Ely, Esquire

# EXHIBIT J

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 \* \* \*

4 DOUGLAS EL, Individually and : CIVIL ACTION  
5 on behalf of all others :  
6 similarly situated, :  
7 Plaintiff, :

8 vs. :

9 SOUTHEASTERN PENNSYLVANIA :  
10 TRANSPORTATION AUTHORITY, :  
11 Defendant, :

12 vs. :

13 P&D Jagiela Enterprises, Inc. :  
14 t/a Liberty Vans (Improperly :  
15 Pleaded as J&D Jagicla :  
16 Enterprises t/a Liberty Vans), :  
17 et al., :

18 Third-Party Defendants. : NO. 02-CV-3591

19 \* \* \*

20 Wednesday, February 9, 2005

21 \* \* \*

22 STATEMENT OF COUNSEL  
23 REGARDING ORAL DEPOSITION OF  
24 DOUGLAS CARPENTER

\* \* \*

21 ESQUIRE DEPOSITION SERVICES  
22 1880 John F. Kennedy Boulevard  
23 15th Floor  
24 Philadelphia, Pennsylvania 19103  
215.988.9191

1 STATEMENT OF COUNSEL, taken at the law  
2 offices of SPECTOR, ROSEMAN & KODROFF, P.C.,  
3 1818 Market Street, Suite 2500, Philadelphia,  
4 Pennsylvania 19103, beginning at 10:36 a.m.,  
5 before Cheryl L. Goldfarb, a Registered  
6 Professional Reporter and an approved reporter of  
7 the United States District Court.

8 \* \* \*

9 A P P E A R A N C E S :

10  
11  
12  
13 DAVID J. COHEN, ESQUIRE  
SPECTOR, ROSEMAN & KODROFF, P.C.

14 1818 Market Street  
Suite 2500

15 Philadelphia, Pennsylvania 19103  
215.496.0300

16 -- Representing the Plaintiff and the Class  
17

18 \* \* \*  
19  
20  
21  
22  
23  
24

1 MR. COHEN: Let's open the record.

2 My name is David Cohen. I'm the  
3 attorney for the plaintiff, Douglas El, E-1,  
4 in the matter captioned El versus SEPTA.  
5 Today is February 9th, 2005, and it is  
6 presently 10:36 a.m.

7 I had noticed the deposition of one of  
8 SEPTA's witnesses, a Mr. Douglas Carpenter,  
9 for this morning. Mr. Carpenter has not  
10 appeared in my office. And SEPTA's counsel,  
11 Robert Haurin, H-a-u-r-i-n, has also failed to  
12 appear.

13 I will create a record with a brief  
14 history of the negotiations concerning  
15 Mr. Carpenter's deposition and the scheduling  
16 issues concerning that deposition for purposes  
17 of a Motion to Compel.

18 On November 9th, 2004, Judge Joyner  
19 granted plaintiff's request to serve document  
20 requests related to Mr. Carpenter's affidavit  
21 in support of SEPTA's Motion for Summary  
22 Judgment and to depose Mr. Carpenter.

23 On November 10th, 2004, plaintiff served  
24 document requests on SEPTA concerning

1 Mr. Carpenter's affidavit.

2 On November 23rd, 2004, plaintiff  
3 noticed Mr. Carpenter's deposition for  
4 December 1st, 2004, pending receipt of SEPTA's  
5 document production.

6 SEPTA did not respond to plaintiff's  
7 document requests concerning Mr. Carpenter's  
8 affidavit before February 1st, so that  
9 deposition was cancelled.

10 On December 20th, 2004, plaintiff  
11 received SEPTA's document production  
12 concerning Mr. Carpenter's affidavit.

13 On December 23rd, 2004, believing that  
14 SEPTA's document production was not  
15 sufficient, plaintiff filed a Motion to Compel  
16 additional criminal record information  
17 relating to SEPTA's operators.

18 On January 7th, 2005, Judge Joyner  
19 denied this Motion to Compel and ordered  
20 plaintiff to proceed with the deposition of  
21 Mr. Carpenter.

22 After several efforts to amicably  
23 resolve scheduling problems between counsel,  
24 on January 28th, 2005, a Friday, I sent



1 plaintiff's counsel a letter, providing six  
2 possible dates for Mr. Carpenter's deposition  
3 between February 3rd and February 14th of  
4 2005.

5 That same day, Mr. Haurin responded by  
6 letter that he was unavailable for three of  
7 those dates.

8 On January 31st, 2005, the following  
9 Monday, I served SEPTA with a deposition  
10 notice requiring Mr. Carpenter to appear  
11 today, February 9th, 2005, at 10:00 a.m. in my  
12 office, which is located at 1818 Market  
13 Street, Suite 2500, in Philadelphia.

14 I will note that Mr. Haurin's office, on  
15 South 15th Street, is less than five blocks  
16 away.

17 Since February 4th, 2005, I have had  
18 some correspondence with Mr. Haurin concerning  
19 Mr. Carpenter's appearance today. After  
20 representing that today's date was available  
21 for Mr. Carpenter's deposition to take place,  
22 Mr. Haurin thereafter represented that he  
23 would not produce Mr. Carpenter today, despite  
24 my insistence that the deposition go forward

1 as noticed.

2 Mr. Haurin offered the alternative of  
3 presenting Mr. Carpenter for deposition on the  
4 afternoon of February 14th, 2005.

5 I explained to Mr. Haurin repeatedly  
6 that his proposal was unacceptable because  
7 plaintiffs in this case have scheduled another  
8 deposition for that same day, February 14th,  
9 that is of a witness named Vincent Walsh, and  
10 is expected to go well into the afternoon,  
11 given Mr. Walsh's material connection to the  
12 origins of plaintiff's claims and to SEPTA's  
13 defenses.

14 Given that I have no way of knowing how  
15 long Mr. Walsh's deposition will go, I  
16 explained to Mr. Haurin that I was unable to  
17 agree that Mr. Carpenter's deposition could  
18 take place that same day.

19 And given that Mr. Haurin had  
20 represented to me that February 9th was an  
21 available day for Mr. Carpenter's deposition,  
22 I insisted on going forward today and sent him  
23 at least two letters saying exactly that.

24 It is now 10:45 a.m. Neither Mr. Haurin

1 nor Mr. Carpenter has appeared in my office.  
2 And I intend to file a Motion to Compel  
3 Mr. Carpenter's appearance at a deposition, as  
4 well as a Motion for Sanctions against  
5 Mr. Haurin and SEPTA for refusing to produce  
6 Mr. Carpenter for this deposition.

7 Thank you.

8 \* \* \*

9 (Witness excused.)

10 \* \* \*

11 (Whereupon, the deposition was  
12 adjourned at 10:45 a.m.)

13 \* \* \*